

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

24 JULY 2006

OBSTRUCTION OF PUBLIC RIGHT OF WAY No. 142

(Report of the Director of Environment, Transport and Sustainable Development)

(Ward: Lockleaze)

Purpose of Report

1. To advise committee on the enforcement action officers are taking to remove a gate which is obstructing access to Public Footpath No. 142 from Dovercourt Road to Brangwyn Grove, Lockleaze.

Background

2. Public Footpath 142 runs along the entranceway to Dovercourt Road Depot and then follows the lane at the rear of the houses numbered 148 to 184 Dovercourt Road with a defined width of 9 feet. The footpath then continues between the City Council depot and allotments, crossing a stream to reach the railway bridge where it meets public footpath 141. After crossing the railway it continues on to Brangwyn Grove.
3. On 14 June 2005, the Council was served with two Section 130A Notices under the Highways Act 1980, one in respect of overhanging vegetation at the eastern end of public footpath 142 at Brangwyn Grove, shown as point A on Appendix A, which has since been cleared; and another in respect of a gate obstructing the footpath adjacent to the depot off Dovercourt Road (marked with an X on appendix A).
4. The Council, as Highway Authority, has a statutory duty under Section 130 of the Highways Act 1980 to:

“assert and protect the rights of the public to the use and

enjoyment of [public rights of way within Bristol]; and to

“prevent so far as possible, the unauthorised stopping up or obstruction” of all its public rights of way.

5. Section 130A enables any member of the public who encounters certain types of obstruction (excluding those caused by buildings or other structures used for human habitation) to serve notice on a Council. If the obstruction is not removed to the satisfaction of the person serving notice, they may apply to the Magistrates Court for an order requiring the Council to secure the removal of the obstruction within a specified, reasonable period.

Public Consultation

6. After receipt of the Section 130A notices, the Council wrote to residents in July 2005 advising them that the Highway Authority had a statutory duty to take enforcement action to remove the gate. A public meeting was subsequently held on Tuesday 6th September 2005 in order to explain the legal background and to clarify the role of the Highway Authority. The Police, 22 residents and ward councillors Emma Bagley and Sean Emmett attended the meeting. It is fair to say that many residents did not fully understand why a public footpath, which had been blocked for a considerable period of time, must now be reopened. However after discussion the legal duty of the Highway Authority to take enforcement action was understood and accepted.
7. Further discussions subsequently took place over a number of weeks in an endeavour to agree actions that would meet the concerns of residents and also the statutory duty of Bristol City Council as Highway Authority. Options that were discussed included:
 - Closure of the footpath on the grounds that it is no longer needed for public use. However, this was unlikely to be successful as a Section 130A notice had been served, which implied that the footpath was needed;
 - Diversion of the path onto another alignment through the allotments. Unfortunately this option was not supported by officers

within the Council's Culture and Leisure Services Department who are the land managing Directorate;

- Diversion of the path onto the alignment of Public Footpath No. 141. However, it is not possible legally to divert one public footpath onto the alignment of another, as this amounts to an extinguishment of one route;
- Diversion or closure of footpath on the grounds that it facilitates crime. This is a very lengthy legal procedure that Bristol City Council has never undertaken, as the legislation requires that an area must first be designated by the Secretary of State and that an application for an order must be supported by crime statistics which clearly show that the public footpath facilitates crime. Enquiries have been made of the Police to ascertain whether crime statistics are available which show that public footpath 142 did indeed facilitate crime, i.e. that the footpath was used to access properties to commit criminal acts. There are no records to suggest this and in fact Police records suggest the contrary, in that crime is from the front of the properties not from the public footpath. We do not therefore believe that an application on the grounds that the footpath facilitates crime would be successful
- Provisions relating to Gating Orders in Section 2 of the Clean Neighbourhoods and Environment Act 2005, enacted on the 1 April 2006, which gives powers to the local highway authority to provide for timed locking of gates across a public footpath. However, the grounds which have to be satisfied are comprehensive and require alternative measures to have been considered in the first instance (see paragraph 5 of the Report on Gating Orders, included as Item No. xx in the papers for this Committee).
- The installation of an unlocked pedestrian gate within the double vehicular gates. The pedestrian gate was provided by the residents, but has since been welded shut.

Conclusions

8. In respect of each of the above-mentioned Public Path Order procedures for stopping up or diversion, the applicants would have to

pay a fee in the order of £2000 without guarantee of success, as the orders must be advertised and may attract objections. In the case of the latter two procedures for prevention of crime and anti-social behaviour, extensive research is required by the applicants and alternative means of dealing with problems must have initially been considered and tried where appropriate to show that closure of the footpath is a last resort.

It must be emphasised that the Public Rights of Way team was not consulted on the proposal to gate the footpath, and so were unaware of the issues leading up to this action. The reasons that are now given relate to anti social activities such as dumping and household security. However, these are not grounds that the Highway Authority may take into account when considering enforcement action; although as set out above they may be taken into account in respect of a Public Path Order application, if supported by clear evidence of instances of crime and/or anti-social behaviour.

9. The vegetation has now been cleared from the land in council ownership by the land holding directorate and a bridge installed across the stream by the British Trust for Conservation Volunteers. Further clearance is needed adjacent to the railway bridge, and this is in hand.
10. Officers have attempted at every opportunity to keep the residents' spokesperson informed of the clearance works and contacted regularly to remind them that the Highway Authority has a statutory duty to continue enforcement action, unless an application for a Public Path Order is received by the Council.

Options

11. This Committee approved an updated Public Rights of Way Enforcement policy at its meeting on 4 April 2005 (see Appendix B). The Policy states that where obstructions on the PROW network occur, it is customary practice firstly to informally advise/request that the person responsible removes it. In some circumstances the Council may serve a formal notice requiring the person or persons having control or possession to remove the obstruction and, if they do not do so, the Council may carry out the work itself and recover its costs (s143 Highways Act). In other circumstances the Council may

seek an order from the Magistrates Court to require the abatement of the obstruction. The Council has additional powers to prosecute offenders, which may be considered as an alternative to or in conjunction with the above options. Where the offender admits to an offence, the Council may consider a formal caution as an alternative to prosecution.

Consultation Internal: Legal Services

Appendices Appendix A – Plan showing locations of obstructions
Appendix B – Amended Public Rights of Way
Enforcement Policy, April 2005.

Policy Implications There are no specific policy implications arising from this report.

Resource Implications A Legal Services solicitor may be required to advise on and prepare Notices and possible Magistrate's Court action.

Financial Legal costs and the likely costs associated with the implementation of alternative measures in association with a Public Path Order application.

Other Approvals Necessary None

Recommended: (1) That committee note the report and the course of action which officers are following in respect of enforcement action under Section 143 of the Highways Act 1980 to ensure that the pedestrian gate is open and access to Public Footpath No 142 from Dovercourt Road to Brangwyn Grove is not obstructed. If within one month of the service of the Notice, the obstruction is not removed and the path remains impassable to the public, officers will instruct a competent contractor to carry out the works, and that the

**reasonable costs of so doing be recovered
from the defendants.**

**Local Government (Access to Information) Act 1985
Background Papers**

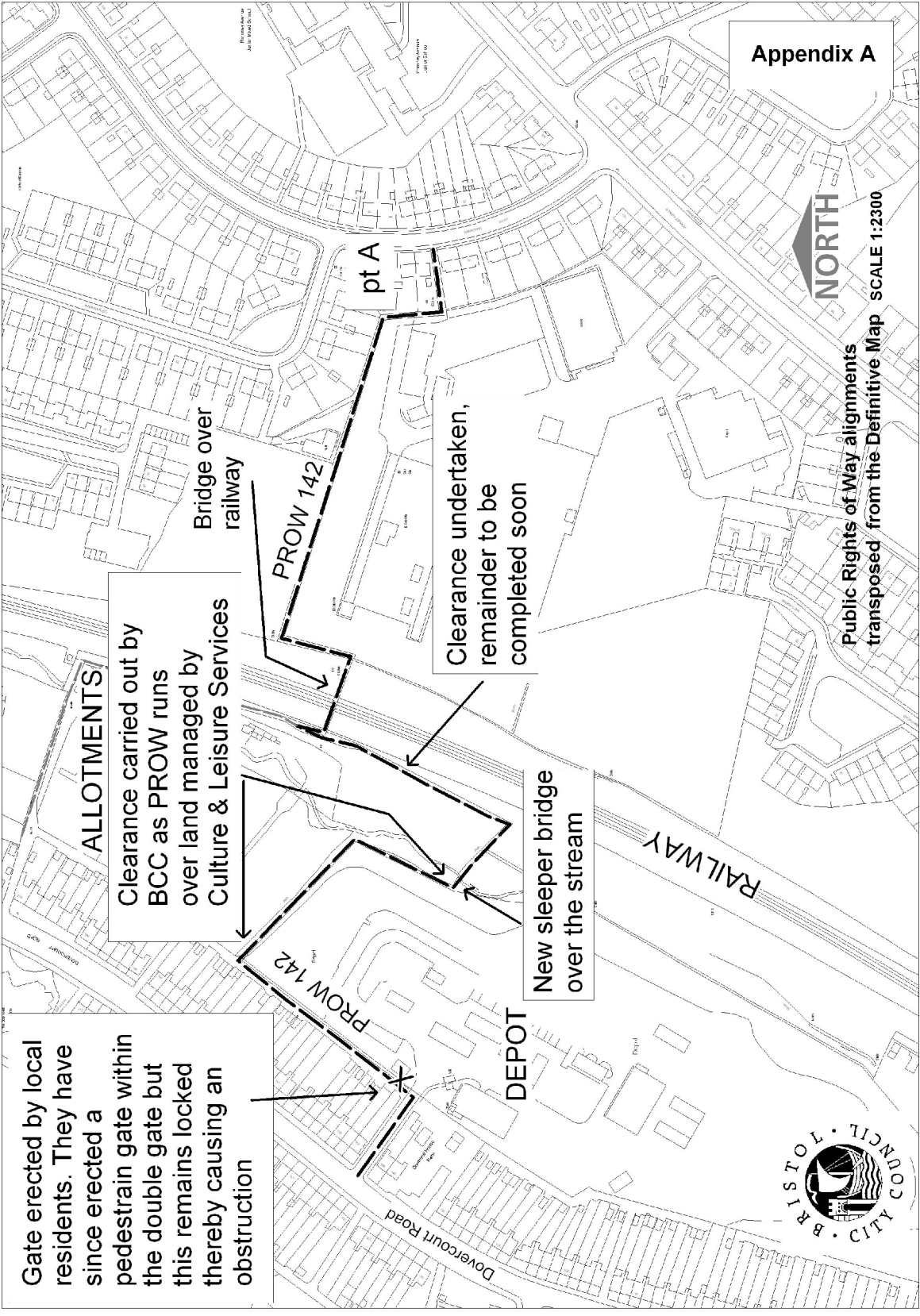
1. Highways Act 1980.
2. Countryside Rights of Way Act 2000
3. Clean Neighbourhoods and Environment Act 2005

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Appendix A

NORTH

Public Rights of Way alignments transposed from the Definitive Map SCALE 1:2300



ALLOTMENTS
 Clearance carried out by BCC as PROW runs over land managed by Culture & Leisure Services

Clearance undertaken, remainder to be completed soon

New sleeper bridge over the stream

Gate erected by local residents. They have since erected a pedestrian gate within the double gate but this remains locked thereby causing an obstruction



PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY

Introduction

There are 160km of Public Rights of Way within Bristol City Council comprising of Public Footpaths and Public Bridleways. There are no Byways Open to All Traffic at present within the City boundary. The Council is under a statutory duty imposed under section 130 of the Highways Act 1980 to

*“assert and protect the rights of the public to the use and enjoyment of”, and
“prevent so far as possible, the unauthorised stopping up or obstruction of”* all these public rights of way.

The aim is to ensure that all public rights of way remain in a condition that is safe and easy for use by the public. The Council carries out practical works to maintain them. When enforcement problems occur, it will use advice, persuasion and where necessary direct enforcement action or prosecution proceedings to resolve them.

To this end, the Council will give advice, practical assistance and guidance to help landowners and occupiers comply with the law. It will also provide information, education and advice to all those who use or wish to use the public rights of way network within the City of Bristol.

This document gives an explanation of relevant concepts and background and concludes with a formal statement of Policy.

Enforcement action is the general term used in this document to cover the range of options including negotiation and advice, direct action by the Council to remove obstructions itself and the taking of other legal action up to and including prosecution.

Principles

There are four basic principles which underlie this policy. These are:

1. **Proportionality** - relating the enforcement action to the seriousness of the breach. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the Council's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law.
2. **Consistency** - taking a similar approach in similar circumstances. This does not mean uniformity of action. When assessing a breach Officers will need to

exercise their professional discretion taking into account all the relevant factors of the case. Such relevant factors might include the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.

3. **Transparency** - ensures that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further enforcement action. It also helps maintain public confidence in the ability of the Service to fulfil its duties. Where enforcement action is required an explanation (usually in writing) will be given of why that action is necessary and when it must be carried out. Unless urgent action is required, an opportunity will be provided to discuss what is necessary to comply with the law.
4. **Targeting** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including assessment of risk, impact on the public and complaints from the public.

At all stages when considering enforcement action, the Council will consider fully the provisions of the Human Rights Act 1998.

Scope of the Policy

Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or to their rights being infringed. The main areas to which this Policy applies are listed below.

- A. Obstruction or unauthorised stopping up of the public right of way, HA Sec137
- B. Restoration of public rights of way lawfully ploughed but not reinstated, HA Sec 134
- C. Unlawful deposit of materials or structures in the public right of way, HA Sec 149
- D. Misleading notices on or near to a public right of way, HA / NPk&CAct
- E. Vegetation overhanging a public right of way, Sec 154(i)
- F. Barbed wire likely to cause a nuisance to users of a public right of way, HA Sec 164
- G. Inadequate or unauthorised stiles and gates on public rights of way, HA Sec 146

Other nuisances, obstructions and offences will be dealt with in a comparable manner according to the circumstances of the case.

Courses of Action

There are several possible courses of action available to the Council depending upon the nature of the offence.

2. **To Give Advice** - Advice may be given when it is considered that the infringement is of a minor nature, and the Council is confident the owner or occupier involved will take the required corrective action. The owner or occupier will be requested to take appropriate remedial action within a given time period depending upon the circumstances of the case.
3. **Enforcement Notices** - A formal Notice may be served if an offence has been committed and where a request to take remedial action has failed. Such Notice will include provision for the Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs.
4. **Prosecution** - In some circumstances the Council will prosecute if it believes it to be in the public interest to do so and this may be undertaken in tandem with the service of Notices (as above). Certain offences require the service of a Notice before an application can be made to the Magistrates Court for an order to remedy the problem.

Whilst the Council would normally commence an Enforcement Action by *Giving Advice* and only escalate to a more severe course of action if that was unsuccessful, it reserves the right to issue an *Enforcement Notice* or instigate *prosecution proceedings* immediately where it is appropriate to do so. This may be considered justified if the breach was particularly serious or the offender had a history of similar offences. In certain limited circumstances only (set out in Policy EP3), a Public Path Order may be considered as an acceptable alternative to Enforcement Action.

Prosecutions

Prosecutions are normally a last resort but remain an important part of the enforcement process. In cases where there is sufficient evidence, the Council will prosecute suspected offenders if there are grounds for believing that the offence is likely to be continued or repeated and where it is appropriate to deter others.

Each case is considered on its merits taking into account all the circumstances and in accordance with the Code of Practice for the Crown Prosecution Service.

Prosecution may be considered more appropriate when one or more of the following applies:

- There is a significant risk to public safety
- There is a flagrant breach of the law, or if notice had been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.

Additional Considerations

- Is the prosecution in the public interest?
- Does the evidence provide a realistic prospect of conviction?
- Is a conviction likely to result in a significant fine or other penalty?
- Is the Offence widespread within the Council area?

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once the Council decides to prosecute, it will proceed without undue delay.

Prioritising Enforcement Work

There are a number of unresolved obstructions to the PROW network. Whilst only a small number seriously impact on the public’s enjoyment of the network, it is important that all these issues are addressed so that users and landowners / occupiers have certainty about the extent of the public’s rights. As a consequence it is necessary that a system of prioritising the enforcement work of the PROW Team is operated.

Non-seasonal obstructions coming to the attention of the PROW Team are categorised as follows:

PRIORITY OBSTRUCTIONS	Obstructions where one or more of the criteria set out in Policy EP2 are met. These obstructions will be dealt with as a matter of urgency by the PROW Team.
ROUTINE OBSTRUCTIONS	Obstructions which do not meet the criteria set out in Policy EP2 but which nonetheless may have a negative impact on the public trying to use the path. These obstructions will be added to a “Routine Obstructions” list and dealt with in chronological order of receipt as and when resources allow.

DE MINIMIS OBSTRUCTIONS	Obstructions which appear negligible in their impact on the public. These will be recorded on file. Resolution of the issue will be sought if an opportunity arises or if development is proposed for the affected land.
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In some cases, as time passes it becomes progressively more difficult to secure the removal of an obstruction. Officers will therefore retain discretion to deal with “new” obstructions immediately, regardless of the above prioritisation, where that is considered an effective use of resources. This applies to all seasonal obstructions. Alternatively, “new” obstructions may be placed at the top of the “Routine Obstructions List” where that is more appropriate.

Use Of Public Path Orders (PPOs)

A number of obstructions on PROW may be longstanding and of such a nature that successful enforcement action may be costly, difficult to achieve or undesirable. An example of this might be where buildings had been constructed over a PROW some years ago.

In such cases the making of a PPO (e.g. a diversion order to circumvent or avoid the obstruction) may appear a more appropriate and efficient response.

Nonetheless, to act as an effective deterrent an enforcement policy must avoid the danger of appearing to condone obstructing a PROW merely because it would be awkward or difficult to take direct action or prosecute. Consequently, the making of PPOs to deal with obstructions on PROW would be acceptable only in certain limited circumstances.

In cases where a PPO is considered acceptable normal PPO procedures will be applied including provisions for the recovery of the Council's costs. In the event of the application being unsuccessful for any reason, then the case will be dealt with as a standard enforcement issue.

BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY STATEMENT

POLICY EP1

Wherever obstructions or other breaches of relevant legislation are identified, Bristol City Council will utilise its various enforcement powers as set out in this document to remedy the problem.

POLICY EP2

In dealing with enforcement cases, priority will normally be given to cases where, in the view of Officers, one or more of the following criteria are met:

1. Where continuation of the obstruction provides an unacceptable health and safety risk;
2. Where resolution of the obstruction will provide a significantly enhanced PROW network;
3. Where resolution of the obstruction will contribute significantly to other Council objectives;
4. Where the obstruction adversely affects a promoted route;¹
5. Where a valid complaint(s) has been received about the obstruction.

POLICY EP3

A Public Path Order will be considered as an acceptable alternative to enforcement action only where all of the following criteria are met:

1. The obstruction does not appear to have been a deliberate attempt to interfere with the public's use of the route;
2. The obstruction is not of recent origin (the use of PPOs to deal with obstructions placed after the date of adoption of this policy will only be considered in exceptional circumstances);
3. In the opinion of a Council Officer, an alternative route exists that will fulfil the requirements of the relevant PPO legislation and maintain the usefulness of the PROW network.

¹ a series of paths, circular or otherwise, which has been publicised by means of a leaflet, book or otherwise by Bristol City Council or with its support. Avon River Path, The Severn Way, Frome Valley Walkway are examples of such routes.

Nothing in this Policy in any way affects the powers available to the Council to take direct action to remove unsafe or unauthorised obstructions or deposits in the highway.